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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1468

FRIEDA SEYFARTH,

Petitioner,

vs.

IVAR LOVRET.

Petition for a Writ of Certiorari to the United States Supreme Court

Frank G. Brookings
Attorney at Law
399 West Mission Boulevard
Pomona, California 91766

Of Counsel:
L. Guy Lemaster, Jr.
250 South Parcells
Pomona, California 91766
714)623-6508

Attorneys for Petitioner

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Attorneys for Petitioner

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

_____

The Petitioner, FRIEDA SEYFARTH, prays that a Writ of Certiorari issue to recover the opinions and judgments of the Supreme Court of the State of California rendered December 20, 1979 at the Court of Appeals of the State of California, Second District, rendered October 18, 1979 and November 13, 1979 and the Superior Court, County of Los Angeles, East District, State of California, rendered December 5, 1977.

OPINIONS BELOW

This Petitioner appealed from a minute order made and entered by the Los Angeles Superior Court wherein the Court denied a motion for a new trial which was based on a lack of jurisdiction in the prior trial.

The appeal was taken to the Court of Appeals, Second District, State of California, by Appellant, in Propria Personam, and on motion of Respondent, the appeal was dismissed on October 18, 1979 without opinion. A motion to the Court of Appeals to Reopen was filed by Petitioner in that she had not properly answered the Respondent's motion. This motion was denied on November 13, 1979 without opinion.

A Petition for Hearing was filed in the Supreme Court of the State of California and it was denied without opinion on December 20, 1979.

JURISDICTION

This was a civil action filed against the Petitioner, Frieda Seyfarth, and her now deceased husband by a building contractor on a construction contract. Judgment was given for plaintiff following an arbitration hearing and award. The judgment was entered after the default of Petitioner in failing to answer the complaint. Petitioner has made numerous requests to ser aside the judgment based on lack of jurisdiction

and denial of due process.

Jurisdiction of the appeal is conferred on this Court by Title 28 of the United States Code, Section 1257.

The validity of the lack of jurisdiction in the trial court and court of appeal denying due process as guaranteed by amendments V and XIV to the Constitution of the United is involved here.

QUESTION PRESENTED

The following question thereby arising is:

Does the entry of judgment after an unauthorized arbitration hearing and where the record does not show service of process on defendant (Petitioner herein) violate the Fifth and Fourteenth Amendments to the United States Constitution?

STATEMENT OF FACTS

Frieda Seyfarth, Petitioner herein, and her now deceased husband were sued by a building contractor for work done on a home for Petitioner alleging a written contract with an arbitration clause covering disputes. The contract was not signed by Petitioner nor her husband. An arbitration hearing followed with an award to the contractor over Petitioner's objections. Thereafter, a Petition to Confirm Award was filed and Petitioner did not respond timely, thereby defaulting, and judgment was entered. The judgment was reversed

and further hearings ordered to to improper execution of the judgment by a commissioner instead of a judge.

Several appeals followed on issues not relevant to this appeal. After one remand, hearings on service of process followed where the trial court found that this Petitioner was served, although there was no factual evidence to support such a finding. A limited portion of the transcript is attached as Appendix A to demonstrate the confusion of that hearing in finding service.

However, after that finding, the Court corrected the record to indicate that a proof of service of summons had never been filed with the Court. This was done by the Court requesting a certificate from the Clerk of the Court (Appendix B).

To illustrate this point, the Code of Civil Procedure of the State of California, Section 581(a), requires that the summons and proof of service thereof must be filed within three years of commencement of the action or the action must be dismissed (Appendix C). More than three years had passed at that time. This would indicate that time would have passed without proof of service if proper procedure had been followed in showing whether or not Petitioner had been served.

Actually, as shown before, the original judgment of 1967 had been set aside as to this Petitioner after an appeal and order thereon in 1970. The evidentiary hearing on service of process

was held in May, 1972. A judgment confirming the arbitrator's award was made on June 27, 1972, all after much more than three years since the filing of the complaint in 1966, without judgment being effectively entered as per the Court of Appeal.

As an additional point of error, arbitration proceeded at the trial court level pursuant to statute defined in the Code of Civil Procedure, Section 1280, et seq., of the State of California, which allowed arbitration only when there had been an agreement in writing between the parties. No such agreement existed between the parties since the contract relied on by the contractor was not signed by this Petitioner, or her husband. Since there was no foundation at law for arbitration, there was not a jurisdictional right to make an order on the arbitration award and the total action becomes void.

Many cases hold that though jurisdiction of the Court is not questioned during a trial, such right is not waived and may be raised for the first time on appeal or at any time. See Fletcher vs. Superior Court, (1926), 79 C.A. 468, 477; 250 P. 195.

THE FEDERAL QUESTION PRESENTED IS SUBSTANTIAL,

If the correct procedure had been followed, this Petitioner would have had a right to appeal, present testimony, and contest the proceedings and her rights to due process would have been

preserved.

"If a judgment was void before the motion, neither the order denying the motion nor the affirmance of that order by the Court imparted to the judgment any force or validity. It has been held that the affirmance by an appellate court of a void judgment imparts to it no validity; and especially if such affirmance is put upon the grounds not touching its validity."

Pioneer Land Company vs. Maddux, 109 Cal. 633, 642.

Even successive denials of a motion to vacate a void judgment do not preclude the court on a later motion upon the same grounds from vacating the judgment. The reason for this rule is that a void judgment is no judgment at all, no matter how many times its nullity has been overlooked by the Court or how many its validity has been pronounced by the Court.

Illustrative of this rule is Hager vs. Hager, 199 Cal. App. 2d 259.

The trial court's refusal to apply the due process provisions of the Fifth and Fourteenth Amendments has deprived Petitioner of her property without a hearing on the merits.

Following denials of continuous requests to the trial court for relief, Petitioner suffered the loss of her home by execution of the judgment. Since she has never had her day in Court so as to

present evidence on the merits of her case, which should have been allowed, she has been effectively denied due process. The basic law of the amendments has been avoided by denying a hearing in the appellate courts of the State of California on jurisdiction and issues after the record was updated. The record was changed to include the Clerk's affidavit, Appendix B, after a hearing to determine service of summons was made.

CONCLUSION

This Petition concerns an issue of fundamental importance to our judicial system; that of guaranteeing due process of law. That is, a right to a day in Court to give evidence on the merits of a lawsuit.

This case started with an unauthorized arbitration hearing and judgment thereon, which was once set aside. Appellant has consistently argued that error was present from the commencement of the action in 1966. It appears that there has been a constant attempt to deny Petitioner a hearing on the merits by opening procedural traps rather than the more safeguarding attitude of attempting to insure due process to a person's appearing before the Courts.

The purported arbitration award and the purported judgment is now so impeached and disproved on the fact of the lack of arbitration agreement by the parties and therefore jurisdiction, and the defects and insufficiencies impeach and disprove the validity of

the arbitration award and the judgment.

1. The arbitration award and judgment and each of them are outside of the Court's jurisdiction.

2. The arbitration award and judgment have been made and entered without any jurisdiction of the trial court.

A judgment or order which is void on its face because of its infirmity as determinable from an inspection of the judgment record as may be set aside on motion at any time after its entry by the Court which rendered the judgment or made the order.

In light of the guarantees as provided by the Fifth and Fourteenth Amendments, the issue herein should be considered at this time by this Court.

Respectfully submitted,

Attorney for Petitioner
Frank G. Brookings
399 West Mission Boulevard
Pomona, California 91766

Of Counsel

L. Guy Lemaster, Jr.
250 South Parcells
Pomona, California 91766
714)623-6508

Appendices

Q BY MR. NEHLSEN: Mr. Hartlett, do you recall whether any other time in the proceedings you had cause to serve papers related to this proceeding, or any other proceedings, up at the Seyfarth Nursery on Mt. Baldy Road?

A Yes. I believe I had served -- I'm not sure that I had served Mr. Seyfarth before, but I'm not sure about serving her because I had served him in another matter besides this one.

Q Was that before or after this particular service, do you recall?

A It was before.

APPENDIX B

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES

In the Matter of the Arbitration between

IVAR LOVRET,

and

FRIEDA SEYFARTH and HERMAN SEYFARTH,

Appellant.

EA C 6353

CERTIFICATE OF CLERK:

I, CLARENCE E. CABELL, County Clerk of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify:

That the Petition to Confirm Award of Arbitrator And for Entry of Judgment was filed on January 30, 1967.

That the Answer to Petition to Confirm Award was filed April 14, 1967.

That as of the date of this certificate, no Summons, Proof of Service of the Summons or Notice of Entry of the Proof of Service of Summons have been filed.

That as of the date of this Certificate, no Affidavit or Stipulation Re: Proof of Service of Summons have been filed.

That this office has made a diligent search of the records, papers, Register of Action and files and finds no Summons, Proof of Service of Summons or Notice of Entry of the Proof of Service of Summons, Affidavit, or Stipulation lodged in the Los Angeles County Clerk's Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court on this 15th day of July, 1975.

CLARENCE E. CABELL,
County Clerk and
Clerk of the Superior
Court of California,
County of Los Angeles

BY: _____
Deputy

APPENDIX C

Section 581(a): DISMISSAL, LACK OF PROSECUTION: EFFECT OF MOTION AS APPEARANCE.

(a) No action heretofore or hereafter commenced by complaint shall be further prosecuted, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the Court in which the same shall have been commenced on its own motion, or the motion of any party interested therein, whether named as a party or not, unless the summons on the complaint is served and return is made within three years after the commencement of said action, except where the parties have filed a stipulation in writing that the time may be extended or the party against whom the action is prosecuted has made a general appearance in the action.

APPENDIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States:

Here are set forth, successively, an excerpt from the Fourteenth Amendment of the Constitution and the full text of the Fifth Amendment of the Constitution.

FOURTEENTH AMENDMENT:

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws.

FIFTH AMENDMENT:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any

criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

SINCE 1952

THE BRIEF SHOP

10844 VENTURA BOULEVARD
NORTH HOLLYWOOD, CA. 91604

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